

1 **RETIREMENT SYSTEM OPT-OUT FOR RURAL HEALTH**

2 **CARE CENTERS**

3 2014 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: David P. Hinkins**

6 House Sponsor: Kay L. McIff

7

8 **LONG TITLE**

9 **General Description:**

10 This bill modifies the Utah State Retirement and Insurance Benefit Act to allow certain
11 employers and employees to be excluded from participation in the Public Employees'
12 Contributory Retirement System and the Public Employees' Noncontributory
13 Retirement System.

14 **Highlighted Provisions:**

15 This bill:

- 16 ▶ allows an employer that is licensed as a nursing care facility and created as a special
17 service district to elect to be excluded from participation in the Public Employees'
18 Contributory Retirement System and the Public Employees' Noncontributory
19 Retirement System under certain circumstances;
- 20 ▶ provides procedures for the exclusion;
- 21 ▶ excludes new and existing employees of a special service district that is licensed as
22 a nursing care facility from participation in the Public Employees' Contributory
23 Retirement System and the Public Employees' Noncontributory Retirement System
24 under certain circumstances; and
- 25 ▶ makes technical changes.

26 **Money Appropriated in this Bill:**

27 None



28 **Other Special Clauses:**

29 None

30 **Utah Code Sections Affected:**

31 AMENDS:

32 **49-11-601**, as last amended by Laws of Utah 2010, Chapter 280

33 **49-12-202**, as last amended by Laws of Utah 2009, Chapters 51 and 165

34 **49-12-203**, as last amended by Laws of Utah 2013, Chapters 310 and 316

35 **49-13-202**, as last amended by Laws of Utah 2012, Chapter 298



37 *Be it enacted by the Legislature of the state of Utah:*

38 Section 1. Section **49-11-601** is amended to read:

39 **49-11-601. Payment of employer contributions -- Penalties for failure to comply --**

40 **Adjustments to be made.**

41 (1) The employer contributions, fees, premium taxes, contribution adjustments, and
42 other required payments shall be paid to the office by the participating employer as determined
43 by the executive director.

44 (2) A participating employer that fails to withhold the amount of any member
45 contributions, as soon as administratively possible, shall also pay the member contributions to
46 the office out of its own funds.

47 (3) Except as limited by Subsections (6) and (7), if a participating employer does not
48 make the contributions required by this title within 60 days of the end of the pay period, the
49 participating employer is liable to the office as provided in Section **49-11-604** for:

50 (a) delinquent contributions;

51 (b) interest on the delinquent contributions as calculated under Section **49-11-503**; and

52 (c) a 12% per annum penalty on delinquent contributions.

53 (4) The executive director may waive all or any part of the interest, penalties, expenses,
54 and fees if the executive director finds there were extenuating circumstances surrounding the
55 participating employer's failure to comply with this section.

56 (5) Contributions made in error will be refunded to the participating employer or
57 member that made the contributions.

58 (6) (a) An employer described in [~~Subsections~~] Subsection **49-12-202**(2)(c) or (d), or

59 Subsection 49-13-202(2)(c) [~~or~~], (d), or (e) that paid retirement benefits to an employee or
60 retiree that were not required by this title may offer the retirement benefits paid to the employee
61 as a substantial substitute to service credit and retirement benefits that may have been earned
62 by the employee under this title.

63 (b) An employee who received retirement benefits under Subsection (6)(a) may sign an
64 affidavit that:

65 (i) acknowledges the substantial substitute received by the employee under Subsection
66 (6)(a); and

67 (ii) irrevocably relinquishes service credit and retirement benefits that may have
68 accrued to the employee under this title effective from the employee's date of employment with
69 the employer described in Subsection (6)(a) to the date of the employer's election under Section
70 49-12-202 or 49-13-202.

71 (c) Nothing in this section shall be construed to diminish an employer's right to recover
72 past retirement benefits other than Social Security, paid to an employee or retiree, in error or
73 under mistaken belief that the employer was not a participating employer.

74 (7) If the employer files with the office an irrevocable written relinquishment of service
75 credit signed by the member or retiree:

76 (a) the office shall proportionally reduce any delinquent contributions, penalties, fees,
77 or interest assessed against a participating employer in connection with a member or retiree
78 described in Subsection (6)(a); and

79 (b) the system has no liability to the employee for benefits relinquished under
80 Subsection (6)(b).

81 Section 2. Section **49-12-202** is amended to read:

82 **49-12-202. Participation of employers -- Limitations -- Exclusions -- Admission**
83 **requirements -- Exceptions -- Nondiscrimination requirements.**

84 (1) (a) Unless excluded under Subsection (2), an employer is a participating employer
85 and may not withdraw from participation in this system.

86 (b) In addition to their participation in this system, participating employers may
87 provide or participate in public or private retirement, supplemental or defined contribution
88 plan, either directly or indirectly, for their employees.

89 (2) The following employers may be excluded from participation in this system:

90 (a) an employer not initially admitted or included as a participating employer in this
91 system prior to January 1, 1982 if:

92 (i) the employer elects not to provide or participate in any type of private or public
93 retirement, supplemental or defined contribution plan, either directly or indirectly, for its
94 employees, except for Social Security; or

95 (ii) the employer offers another collectively bargained retirement benefit and has
96 continued to do so on an uninterrupted basis since that date;

97 (b) an employer that is a charter school sponsored by the State Board of Education or a
98 school district that makes an election of nonparticipation in accordance with Section
99 53A-1a-512 unless the charter school makes a one-time, irrevocable retraction of the election
100 of nonparticipation in accordance with Subsection 53A-1a-512(9); ~~or~~

101 (c) an employer that is a hospital created as a special service district under Title 17D,
102 Chapter 1, Special Service District Act, that makes an election of nonparticipation in
103 accordance with Subsection (4)~~[-]; or~~

104 (d) an employer that is licensed as a nursing care facility under Title 26, Chapter 21,
105 Health Care Facility Licensing and Inspection Act, and created as a special service district
106 under Title 17D, Chapter 1, Special Service District Act, in a rural area of the state that makes
107 an election of nonparticipation in accordance with Subsection (4).

108 (3) An employer who did not become a participating employer in this system prior to
109 July 1, 1986, may not participate in this system.

110 (4) (a) (i) Until June 30, 2009, a employer that is a hospital created as a special service
111 district under Title 17D, Chapter 1, Special Service District Act, may make an election of
112 nonparticipation as an employer for retirement programs under this chapter.

113 (ii) Until June 30, 2014, an employer that is licensed as a nursing care facility under
114 Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act, and created as a
115 special service district under Title 17D, Chapter 1, Special Service District Act, in a rural area
116 of the state may make an election of nonparticipation as an employer for retirement programs
117 under this chapter.

118 (b) An election provided under Subsection (4)(a):

119 (i) is a one-time election made no later than the time specified under Subsection (4)(a);

120 (ii) shall be documented by a resolution adopted by the governing body of the special

121 service district;

122 (iii) is irrevocable; and

123 (iv) applies to the special service district as the employer and to all employees of the
124 special service district.

125 (c) The governing body of the special service district may offer employee benefit plans
126 for its employees:

127 (i) under Title 49, Chapter 20, Public Employees' Benefit and Insurance Program Act;

128 or

129 (ii) under any other program.

130 (5) If a participating employer purchases service credit on behalf of regular full-time
131 employees for service rendered prior to the participating employer's admission to this system,
132 the service credit shall be purchased in a nondiscriminatory manner on behalf of all current and
133 former regular full-time employees who were eligible for service credit at the time service was
134 rendered.

135 Section 3. Section **49-12-203** is amended to read:

136 **49-12-203. Exclusions from membership in system.**

137 (1) The following employees are not eligible for service credit in this system:

138 (a) subject to the requirements of Subsection (2), an employee whose employment
139 status is temporary in nature due to the nature or the type of work to be performed;

140 (b) except as provided under Subsection (3)(a), an employee of an institution of higher
141 education who participates in a retirement system with the Teachers' Insurance and Annuity
142 Association of America or with any other public or private retirement system, organization, or
143 company during any period in which required contributions based on compensation have been
144 paid on behalf of the employee by the employer;

145 (c) an employee serving as an exchange employee from outside the state;

146 (d) an executive department head of the state, a member of the State Tax Commission,
147 the Public Service Commission, and a member of a full-time or part-time board or commission
148 who files a formal request for exemption;

149 (e) an employee of the Department of Workforce Services who is covered under
150 another retirement system allowed under Title 35A, Chapter 4, Employment Security Act; ~~or~~

151 (f) an employee who is employed on or after July 1, 2009, with an employer that has

152 elected, prior to July 1, 2009, to be excluded from participation in this system under Subsection
153 [49-12-202\(2\)\(c\)](#)[-]; or

154 (g) an employee who is employed on or after July 1, 2014, with an employer that has
155 elected, prior to July 1, 2014, to be excluded from participation in this system under Subsection
156 [49-12-202\(2\)\(d\)](#).

157 (2) If an employee whose status is temporary in nature due to the nature of type of
158 work to be performed:

159 (a) is employed for a term that exceeds six months and the employee otherwise
160 qualifies for service credit in this system, the participating employer shall report and certify to
161 the office that the employee is a regular full-time employee effective the beginning of the
162 seventh month of employment; or

163 (b) was previously terminated prior to being eligible for service credit in this system
164 and is reemployed within three months of termination by the same participating employer, the
165 participating employer shall report and certify that the member is a regular full-time employee
166 when the total of the periods of employment equals six months and the employee otherwise
167 qualifies for service credits in this system.

168 (3) (a) Upon cessation of the participating employer contributions, an employee under
169 Subsection (1)(b) is eligible for service credit in this system.

170 (b) Notwithstanding the provisions of Subsection (1)(f), any eligibility for service
171 credit earned by an employee under this chapter before July 1, 2009 is not affected under
172 Subsection (1)(f).

173 (c) Notwithstanding the provisions of Subsection (1)(g), any eligibility for service
174 credit earned by an employee under this chapter before July 1, 2014, is not affected under
175 Subsection (1)(g).

176 (4) Upon filing a written request for exemption with the office, the following
177 employees shall be exempt from coverage under this system:

178 (a) a full-time student or the spouse of a full-time student and individuals employed in
179 a trainee relationship;

180 (b) an elected official;

181 (c) an executive department head of the state, a member of the State Tax Commission,
182 a member of the Public Service Commission, and a member of a full-time or part-time board or

183 commission;

184 (d) an employee of the Governor's Office of Management and Budget;

185 (e) an employee of the Governor's Office of Economic Development;

186 (f) an employee of the Commission on Criminal and Juvenile Justice;

187 (g) an employee of the Governor's Office;

188 (h) an employee of the State Auditor's Office;

189 (i) an employee of the State Treasurer's Office;

190 (j) any other member who is permitted to make an election under Section 49-11-406;

191 (k) a person appointed as a city manager or chief city administrator or another person
192 employed by a municipality, county, or other political subdivision, who is an at-will employee;
193 and

194 (l) an employee of an interlocal cooperative agency created under Title 11, Chapter 13,
195 Interlocal Cooperation Act, who is engaged in a specialized trade customarily provided through
196 membership in a labor organization that provides retirement benefits to its members.

197 (5) (a) Each participating employer shall prepare a list designating those positions
198 eligible for exemption under Subsection (4).

199 (b) An employee may not be exempted unless the employee is employed in [a] an
200 exempted position designated by the participating employer.

201 (6) (a) In accordance with this section, a municipality, county, or political subdivision
202 may not exempt more than 50 positions or a number equal to 10% of the employees of the
203 municipality, county, or political subdivision whichever is lesser.

204 (b) A municipality, county, or political subdivision may exempt at least one regular
205 full-time employee.

206 (7) Each participating employer shall:

207 (a) file employee exemptions annually with the office; and

208 (b) update the employee exemptions in the event of any change.

209 (8) The office may make rules to implement this section.

210 Section 4. Section 49-13-202 is amended to read:

211 **49-13-202. Participation of employers -- Limitations -- Exclusions -- Admission**
212 **requirements -- Nondiscrimination requirements -- Service credit purchases.**

213 (1) (a) Unless excluded under Subsection (2), an employer is a participating employer

214 and may not withdraw from participation in this system.

215 (b) In addition to their participation in this system, participating employers may
216 provide or participate in any additional public or private retirement, supplemental or defined
217 contribution plan, either directly or indirectly, for their employees.

218 (2) The following employers may be excluded from participation in this system:

219 (a) an employer not initially admitted or included as a participating employer in this
220 system before January 1, 1982, if:

221 (i) the employer elects not to provide or participate in any type of private or public
222 retirement, supplemental or defined contribution plan, either directly or indirectly, for its
223 employees, except for Social Security; or

224 (ii) the employer offers another collectively bargained retirement benefit and has
225 continued to do so on an uninterrupted basis since that date;

226 (b) an employer that is a charter school sponsored by the State Board of Education or a
227 school district that makes an election of nonparticipation in accordance with Section
228 [53A-1a-512](#) unless the charter school makes a one-time, irrevocable retraction of the election
229 of nonparticipation in accordance with Subsection [53A-1a-512\(9\)](#);

230 (c) an employer that is a hospital created as a special service district under Title 17D,
231 Chapter 1, Special Service District Act, that makes an election of nonparticipation in
232 accordance with Subsection (5); ~~[or]~~

233 (d) an employer that is licensed as a nursing care facility under Title 26, Chapter 21,
234 Health Care Facility Licensing and Inspection Act, and created as a special service district
235 under Title 17D, Chapter 1, Special Service District Act, in a rural area of the state that makes
236 an election of nonparticipation in accordance with Subsection (5); or

237 ~~[(d)]~~ (e) an employer that is a risk management association initially created by
238 interlocal agreement before 1986 for the purpose of implementing a self-insurance joint
239 protection program for the benefit of member municipalities of the association.

240 (3) If an employer that may be excluded under Subsection (2)(a)(i) elects at any time to
241 provide or participate in any type of public or private retirement, supplemental or defined
242 contribution plan, either directly or indirectly, except for Social Security, the employer shall be
243 a participating employer in this system regardless of whether the employer has applied for
244 admission under Subsection (4).

245 (4) (a) An employer may, by resolution of its governing body, apply for admission to
246 this system.

247 (b) Upon approval of the resolution by the board, the employer is a participating
248 employer in this system and is subject to this title.

249 (5) (a) (i) Until June 30, 2009, a employer that is a hospital created as a special service
250 district under Title 17D, Chapter 1, Special Service District Act, may make an election of
251 nonparticipation as an employer for retirement programs under this chapter.

252 (ii) Until June 30, 2014, an employer that is licensed as a nursing care facility under
253 Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act, and created as a
254 special service district under Title 17D, Chapter 1, Special Service District Act, in a rural area
255 of the state may make an election of nonparticipation as an employer for retirement programs
256 under this chapter.

257 [~~(ii)~~] (iii) On or before July 1, 2010, an employer described in Subsection (2)[~~(d)~~](e)
258 may make an election of nonparticipation as an employer for retirement programs under this
259 chapter.

260 (b) An election provided under Subsection (5)(a):

261 (i) is a one-time election made no later than the time specified under Subsection (5)(a);

262 (ii) shall be documented by a resolution adopted by the governing body of the
263 employer;

264 (iii) is irrevocable; and

265 (iv) applies to the employer as described in Subsection (5)(a)(i), (ii), or (iii) and to all
266 employees of that employer.

267 (c) The employer making an election under Subsection (5)(a) may offer employee
268 benefit plans for its employees:

269 (i) under Title 49, Chapter 20, Public Employees' Benefit and Insurance Program Act;
270 or

271 (ii) under any other program.

272 (6) If a participating employer purchases service credit on behalf of regular full-time
273 employees for service rendered prior to the participating employer's admission to this system,
274 the service credit shall be purchased in a nondiscriminatory manner on behalf of all current and
275 former regular full-time employees who were eligible for service credit at the time service was

276 rendered.

Legislative Review Note
as of 2-18-14 10:40 AM

Office of Legislative Research and General Counsel